

# YOUTH SERVICES POLICY

<b>Title:</b> Drug-Free Workplace <b>Next Annual Review Date:</b>	<b>Type:</b> A. Administrative <b>Sub Type:</b> 2. Personnel <b>Number:</b> A.2.7
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<b>References:</b> Executive Order No. KBB 2005-08; ACA Standards 2-CO-1C-20 (Administration of Correctional Agencies) and 3-JTS-1C-17 (Juvenile Training Schools); La. R.S. 49:1001 through 1015; 30:2173(2) and 32:1502(5); YS Policy Nos. A.2.1 "Employee Manual", A.2.11 "Employee Assistance Program", C.5.1 "Performance Data and Information" and C.5.3 "Headquarters Audit - Adult and Juvenile Secure Institutions and Non-secure Residential Contract Facilities"; DYS Policy No. 2.5 "Drug-Free Workplace"; Division of Administration, Office of State Purchasing's Bid Laws; 69 FR 19644, Mandatory Guidelines for Federal Workplace Drug Testing Programs	
<b>STATUS: Approved</b>	
<b>Approved By:</b> <i>Simon Gonsoulin, Deputy Secretary</i>	<b>Date of Approval:</b> 04/13/2006

## 1. AUTHORITY:

Deputy Secretary of Youth Services as contained in La. R.S. 36:405; American Federation of Government Employees v. Roberts, 9F.3d 1464 (9th Cir. 1993) and American Federation of Government Employees Local 2391 v. Martin, 969 F.2d 788 (9th Cir. 1992).

## 2. PURPOSE:

To comply with the Governor's Executive Order and enacted laws by providing a comprehensive program of substance abuse education and to establish guidelines for employee drug/alcohol testing.

## 3. APPLICABILITY:

This policy applies to all employees of Youth Services (YS). The Deputy Secretary, Assistant Secretary, Deputy Assistant Secretaries, Undersecretary or designee, Facility Directors, and the Probation and Parole Program Director are responsible for conveying the contents of this policy to all concerned. It is the Deputy Secretary's responsibility to consult with the Louisiana Department of Justice, promulgate this policy mandating drug testing, ensure that a report [Attachment A.2.7 (a) "Employee Drug Testing Report"] regarding the drug testing program is submitted to the Governor through the Commissioner of the Division of Administration, by December 1, 2006, and to annually update the report.

**4. DEFINITIONS:**

CAP-FUDT laboratory - a laboratory certified by the College of American Pathologists for forensic urine drug testing.

Confirmatory test - drug testing conducted by a CAP-FUDT or SAMHSA certified laboratory after a positive result on an initial test for the presence of drugs.

Custodian of Records - staff person responsible for the direct accountability of drug test results.

Drug testing - for the purpose of this policy, drug testing programs will generally be comprised of two testing components: 1) initial test; and 2) confirmatory test. Performing a confirmatory test may be contingent upon the results of the initial test.

Employee - any individual employed by or appointed to a position with YS (including student workers and temporary appointments) or by an outside agency or provider who works in a facility/office or any individual under contract to YS, who works in a facility or office. (This does not confer "employment" status on independent contractors or employees of outside agencies, but serves to define a class of people who are subject to participation in the "Drug-Free Workplace" Program.)

Illegal substances - controlled dangerous substances as defined in La. R.S. Title 40, alcohol, over the counter drugs, or any substance declared contraband or prohibited by policy and/or practice.

Initial test - the first analytical procedure to detect the presence of drugs or metabolites using approved drug-testing instruments. (See Section 8.A. for additional information.) The results of the initial test are to be used solely to determine the need for a confirmatory test. For those who are being tested for pre-employment purposes, if the initial test produces a positive result, the prospective employee will either be referred for additional confirmatory testing, or not considered for the position. No one whose confirmatory test is positive will be considered for employment.

Medical review officer (MRO) - a licensed physician holding either a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) degree who has:

Knowledge about and clinical experience in controlled substance abuse disorders, Detailed knowledge of alternative medical explanations for laboratory positive drug test results, knowledge about issues relating to adulterated and substituted specimens, and knowledge about possible medical causes for specimens reported as having an invalid result.

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Positive results - results at or above the cutoffs established by the Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register notice published April 13, 2004 (69 FR 19644) effective November 1, 2004, and as amended.

Safety/security sensitive position - any job that directly or indirectly affects the safety and security of others. For the purpose of this policy, safety/security sensitive positions are those that involve direct contact with youth under supervision and those having access to confidential information relative to the care, confinement or supervision of youth. All positions within YS are considered to be safety/security sensitive positions.

SAMHSA - Substance Abuse and Mental Health Services Administration.

SAMSHA certified laboratory - a laboratory certified by the Substance Abuse and Mental Health Services Administration for forensic urine drug testing.

Testing Instrument - testing device.

Unit Head - Facility Directors, Probation and Parole Program Director and the Deputy Secretary or designee for YS Central Office.

YS Central Office - Offices of the Deputy Secretary, Undersecretary or designee of the Office of Management and Finance, Assistant Secretary of the Office of Youth Development and their support staff.

## **5. POLICY:**

The Office of the Governor and this state have a long-standing commitment of working toward a drug-free Louisiana. Since substance abuse is a major contributor to activity which results in adjudication, and is particularly detrimental to the mission of providing safety for our employees, youth and the public, it is the Deputy Secretary's policy to promote increased employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol. In addition, staff who engage in substance abuse are less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and youth.

Any drug testing services shall be procured pursuant to applicable bid laws.

Each Unit Head is responsible for implementation of a substance abuse education program that requires compliance with this policy. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances, and from reporting to work or working while under the influence of or impaired by alcohol or drugs.

**6. TYPE OF TESTING:**

**A. Pre-Employment:**

Drug testing will be conducted prior to employment. (See Section 4. "Initial test" definition for additional information.)

**B. Reasonable Suspicion/Probable Cause:**

1. Reasonable suspicion/probable cause initial testing and confirmatory testing shall be based on any of the following:
  - a. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol or when the odor of alcohol, marijuana smoke, or other substance is present;
  - b. Abnormal conduct or erratic behavior;
  - c. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term "trafficking" shall also mean "distribution");
  - d. Information provided by reliable and credible sources or independently corroborated;
  - e. Evidence that the employee tampered with a previous drug or alcohol test; and/or
  - f. Credible allegation or confirmation of involvement in a significant violation of policy in which judgment may have been impaired.
2. Reasonable suspicion/probable cause drug tests must be authorized by the Unit Head.

**C. Post Accident:**

1. An employee shall be subject to drug testing following an accident that occurs during the course and scope of their employment that:
  - a. Involves circumstances leading to a reasonable suspicion of the employee's drug use;
  - b. Results in a fatality; or
  - c. Results or causes the release of hazardous waste as defined in La. R.S. 30:2173(2) or hazardous materials as defined in La. R.S. 32:1502(5).
2. An employee who is involved in an accident that results in bodily injury or property damage may be subject to drug testing.

**D. Rehabilitative:**

As a condition for returning to work after participating in a rehabilitation program, an employee must participate in a substance abuse aftercare program and agree to follow-up testing on a random basis for up to 48 months. (Additionally, medical professionals who are in an impaired program or who have a documented substance abuse history must agree to periodic drug/alcohol testing throughout the course of their employment.) Staff testing positive without legitimate explanation whose employment is not terminated are subject to rehabilitative random testing for a period of 48 months.

**E. Random:**

All employees who occupy safety/security sensitive positions (as defined in this policy) will be subject to random drug testing. On a quarterly basis, a list of social security numbers representing at least 5% of a Unit's employees will be selected at random by a computer-generated selection process. This list will be provided to each facility, the Division of Youth Services and to the YS Central Office.

**F. Promotion:**

Drug testing will be conducted prior to any promotion.

**G. Triggering Events:**

When events occur in a unit (or any of its subdivisions) that indicate that illegal substances have been or are present, testing of all staff who might have contact with that unit (or any of its subdivisions) shall be conducted by order of the Unit Head, Deputy Assistant Secretary, Deputy Secretary, or his designee.

**7. SUBSTANCES TO BE TESTED FOR:**

As provided by statute, drug testing may be performed for any of the following classes of drugs: marijuana; opiates; cocaine; amphetamines; and phencyclidine. This does not preclude testing for any other drugs or alcohol.

**8. GENERAL PROCEDURES OF THE DRUG TESTING PROGRAM:**

**A. Random Testing List**

1. The YS Central Office's Human Resource Office will generate the list of social security numbers at the prescribed interval and ensure that the lists are distributed directly to the Unit Heads.

(Alternatively, if a unit has a drug-testing services contract with a CAP-FUDT certified or SAMSHA certified laboratory, the production of this list may be included as part of those services.)

2. Unit Heads will establish a process for matching the social security numbers to employee names, notification of selected employees, recording of test results and other appropriate procedures as needed.
3. Employees shall provide a list of prescription medications they are taking at the time of the test.
4. All tests will be conducted during the selected employees' work hours; no employee will be called in on his day/night off or while on approved leave specifically for the purpose of a random drug test.
5. Employees will report as instructed for the random drug test immediately. In no event shall the employee leave the facility or his office without reporting for the drug test.

**B. General Procedure**

All urine specimens for drug testing shall be collected, stored, and transported pursuant to applicable laws and appropriate safety procedures.

1. Drug Screening instruments (e.g., test cups) approved by the Deputy Secretary may be utilized as an initial test to determine the need for further testing, but may not be used as the basis for any disciplinary action or other adverse action. A confirmatory test may be utilized initially in lieu of the initial test at the discretion of Unit Head. A positive result on a confirmatory test is required to initiate disciplinary action.
2. Collection of specimens:
  - a. Collection of urine specimens may be done on-site by staff who have received the appropriate training, or by outside laboratory personnel, or off-site at an outside laboratory.
  - b. All collection of urine specimens shall be made with regard to gender sensitivity and privacy of the individual.
  - c. Direct observation during collection of the urine specimen may be allowed only under the following conditions:
    - 1) There is reason to believe that the individual may alter or substitute the specimen to be provided;
    - 2) The individual has provided a urine specimen that falls outside the acceptable temperature range;

- 3) The last urine specimen provided by the individual was verified by a MRO as being adulterated based upon the determinations of the laboratory;
- 4) The person collecting observes conduct indicating an attempt to substitute or adulterate the sample;
- 5) The individual has previously been determined to have a urine specimen positive for one or more of the drugs listed in Section 7. and is being tested for the purposes of follow-up testing upon or after return to service; or
- 6) The type of drug testing is post-accident or reasonable suspicion/probable cause.
- d. Appropriate security measures should be utilized in the collection area when direct observation is not authorized.
- e. Disposal of bio-hazardous waste will be handled properly in accordance with appropriate safety procedures.

3. Handling and Storage:

This component applies to tests that require the specimen to be preserved for testing and/or transporting to a laboratory.

- a. The person obtaining the urine specimen should sign, date, and record the time the specimen was obtained on an accompanying form and turn over to staff who are responsible for labeling and refrigerating/freezing the specimen.
- b. The area where the refrigerator containing urine samples is located is to be secured at all times when not in use by appropriate staff.
- c. Only appropriately designated and trained staff may retrieve the specimen from the refrigerator for testing.

4. Medical Review Officer:

- a. A Medical Review Officer (MRO), who must be a licensed physician, shall in all instances review positive confirmatory test results. The employee shall be furnished a copy of the results. The MRO must give the employee the opportunity to provide a medical history and/or discuss the test results, and provide a list of medications used by the employee at the time of the test. The MRO shall provide a copy of the results and a report on his meeting with the employee to the Unit Head.
- b. It is not mandatory that the MRO review the results of a pre-employment initial test that results in a positive finding.

**9. ALCOHOL TESTING:**

- A. YS Policy No. A.2.1 "Employee Manual," Employee Rules and Disciplinary Procedures, Rule #11, prohibits employees from reporting for or being on duty under the influence of alcohol or other intoxicants, (or when the odor or effect is noticeable). Therefore, employees may be required to submit to alcohol testing while on duty under circumstances previously defined in Section 6. B., C., D., E., and G.
- B. A portable Breathalyzer or other instrument approved by the Deputy Secretary should be used to determine violation of this policy. In the event of a positive reading on the initial testing instrument, a second test must be conducted.
- C. Only those persons specifically authorized by the Unit Head and who have received instruction in the use of the testing instrument(s) can administer the alcohol test.

**10. TRAINING REQUIRED:**

A minimum of one hour of training per year on the effects and consequences of controlled substance abuse on personal health and safety at the workplace and indicators of substance use or abuse is required for all full time employees.

**11. RECORD KEEPING AND REPORTING REQUIREMENTS:**

- A. A Custodian of Records is required to maintain a record of each employee who has submitted to a drug or alcohol test, the date of such test, the name of the person performing the test, the number of tests performed, and a summary of the results of each type of test.

This information is confidential and must be maintained in a separate file.

- B. All test results will be retained for five years.
- C. All information, interviews, reports, statements, memoranda and/or test results received through the Unit's drug testing program are confidential communications, pursuant to La. R.S. 49:1012 and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. All such confidential information shall be maintained in a secure manner.



- D. Pre-employment and promotional drug testing will be verified through the YS Policy No. C.5.3 audit process and reported through the YS Human Resources Annual Program Review.
- E. A monthly report of drug testing activities will be compiled for submission in the YS Policy No. C.5.1 report. The report will reflect the categories of testing conducted, the number of tests conducted by category, number of positives, percentage of positives, and number of negatives.
- F. By November 1st of each year, each Unit's Business Office will submit a report to the YS Human Resources Office detailing the number of employees affected by the drug testing program, the categories of testing conducted, the associated costs of testing, and the effectiveness of the program. In conjunction with the Deputy Secretary or designee, the YS Human Resources Office will compile the YS Annual Drug Testing Report [Attachment A.2.7 (a) "Employee Drug Testing Report"] for submission to the Governor through the Commissioner of Administration by December 1st of each year.

## **12. VIOLATION OF THIS POLICY:**

Confirmatory tests with positive results may be cause for initiation of disciplinary action in accordance with YS Policy No. A.2.1 "Employee Manual."

When a confirmed positive confirmatory test result does not result in termination, referral to the YS Employee Assistance Program or other individual or agency equipped to coordinate accessibility to substance abuse education or counseling is appropriate. (Refer to YS Policy No. A.2.11 "Employee Assistance Program.")

**Previous Regulation/Policy Number:** A-02-008 / A.2.7

**Previous Effective Date:** 06/20/2000

**Attachments/References:**



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